



0000166359

BEFORE THE ARIZONA CORPORATION COMMISSION

RECEIVED

COMMISSIONERS

SUSAN BITTER SMITH, Chairman
BOB STUMP
BOB BURNS
DOUG LITTLE
TOM FORESE

2015 OCT -5 P 2:14

AZ CORP COMMISSION
DOCKET CONTROL

IN THE MATTER OF THE APPLICATION OF
VALENCIA WATER COMPANY – TOWN
DIVISION FOR THE ESTABLISHMENT OF JUST
AND REASONABLE RATES AND CHARGES
FOR UTILITY SERVICE DESIGNED TO REALIZE
A REASONABLE RATE OF RETURN ON THE
FAIR VALUE OF ITS PROPERTY
THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. W-01212A-12-0309

IN THE MATTER OF THE APPLICATION OF
GLOBAL WATER – PALO VERDE UTILITIES
COMPANY FOR THE ESTABLISHMENT OF
JUST AND REASONABLE RATES AND
CHARGES FOR UTILITY SERVICE DESIGNED
TO REALIZE A REASONABLE RATE OF
RETURN ON THE FAIR VALUE OF ITS
PROPERTY THROUGHOUT THE STATE OF
ARIZONA

DOCKET NO. SW-20445A-12-0310

IN THE MATTER OF THE APPLICATION OF
WATER UTILITY OF NORTHERN SCOTTSDALE,
INC. FOR A RATE INCREASE

DOCKET NO. W-03720A-12-0311

IN THE MATTER OF THE APPLICATION OF
WATER UTILITY OF GREATER TONOPAH FOR
THE ESTABLISHMENT OF JUST AND
REASONABLE RATES AND CHARGES FOR
UTILITY SERVICE DESIGNED TO REALIZE A
REASONABLE RATE OF RETURN ON THE FAIR
VALUE OF ITS PROPERTY THROUGHOUT THE
STATE OF ARIZONA

DOCKET NO. W-02450A-12-0312

Arizona Corporation Commission

DOCKETED

OCT 5 2015

DOCKETED BY

1 IN THE MATTER OF THE APPLICATION OF
2 VALENCIA WATER COMPANY – GREATER
3 BUCKEYE DIVISION FOR THE
4 ESTABLISHMENT OF JUST AND REASONABLE
5 RATES AND CHARGES FOR UTILITY SERVICE
6 DESIGNED TO REALIZE A REASONABLE RATE
7 OF RETURN ON THE FAIR VALUE OF ITS
8 PROPERTY THROUGHOUT THE STATE OF
9 ARIZONA

DOCKET NO. W-02451A-12-0313

7 IN THE MATTER OF THE APPLICATION OF
8 GLOBAL WATER – SANTA CRUZ WATER
9 COMPANY FOR THE ESTABLISHMENT OF
10 JUST AND REASONABLE RATES AND
11 CHARGES FOR UTILITY SERVICE DESIGNED
12 TO REALIZE A REASONABLE RATE OF
13 RETURN ON THE FAIR VALUE OF ITS
14 PROPERTY THROUGHOUT THE STATE OF
15 ARIZONA

DOCKET NO. W-20446A-12-0314

13 IN THE MATTER OF THE APPLICATION OF
14 WILLOW VALLEY WATER COMPANY FOR THE
15 ESTABLISHMENT OF JUST AND REASONABLE
16 RATES AND CHARGES FOR UTILITY SERVICE
17 DESIGNED TO REALIZE A REASONABLE RATE
18 OF RETURN ON THE FAIR VALUE OF ITS
19 PROPERTY THROUGHOUT THE STATE OF
20 ARIZONA

DOCKET NO. W-01732A-12-0315

**RUCO'S REPLY TO WILLOW
VALLEY'S RESPONSE IN
OPPOSITION TO PROPOSED STAY**

18
19 The Residential Utility Consumer Office ("RUCO") replies to Willow Valley Water
20 Co., Inc., ("Willow Valley, Willow or Company") response in opposition to the proposed
21 order for the stay of the System Improvement Benefit ("SIB") mechanism docketed by
22 Commission Staff on September 17, 2015.

23 The Commission should reject Willow Valley's request and grant the proposed
24 Order. The SIB, including Willow Valley's SIB, is illegal under the current Court of
25 Appeals ruling – period. (*The Residential Utility Consumer Office v. The Arizona*
26
27

1 *Corporation Commission*, 719 Ariz.Adv. Rep. 5, 355 P.3d 610, (App. 2015 – Appellee has
2 indicated it intends to file a Petition for Review). The fact that RUCO did not appeal
3 Willow Valley’s case is irrelevant. Willow Valley’s SIB is still illegal, and to reject the
4 proposed Order would fail to recognize the decision of Arizona’s Court of Appeals.

5 Willow Valley’s arguments are unpersuasive and should be dismissed. As a
6 practical matter, Willow Valley’s request places the Commission in a tenuous position
7 which is simply unnecessary. Should the Commission approve Willow Valley’s argument
8 and deny the stay, the Commission would act inconsistent with the Opinion of the Court
9 of Appeals – an approach which RUCO believes would undermine the Court’s ruling.
10 Willow Valley is currently not collecting on its SIB so it is not losing any money should the
11 Commission stay the SIB. Should the Supreme Court overturn the Court of Appeals, the
12 Commission could simply lift the stay which would make Willow Valley whole. Even if
13 Willow Valley were collecting on its SIB and the Commission were to stay the collection,
14 the Commission could, upon a favorable ruling by the Supreme Court, reinstate the SIB
15 and order the collection of any lost revenues - either way, the Company is made whole.
16 Whereas, should the Commission approve Willow Valley’s request it will act inconsistent
17 with the Court of Appeals Opinion - the Commission should approve the stay.

18 Willow Valley argues that the Court of Appeals Opinion is not final because no
19 mandate has been issued. It is true that the Court has not issued a mandate and the
20 Commission has indicated that it intends to appeal the case to the Supreme Court.
21 Regardless, the Court of Appeals has issued its Opinion and in the Court’s opinion, the
22 SIB is illegal. Rule 28(a) of the Arizona of the Arizona Rules of Civil Appellate Procedure
23 (“ARCAP”) provides that an “Opinion” is a written disposition of an appeal that is intended
24
25
26
27

1 as precedent. ARCAP 28(b) and Rule 111(b) of the Arizona Rules of the Supreme Court
2 list the factors necessary for an Opinion. By comparison to the “memorandum decision,”
3 those factors set a higher threshold.

4 Moreover, Arizona courts routinely cite published opinions for which mandates
5 have not been issued as precedent. Examples of Arizona courts citing such opinions
6 from just this year include the Arizona Supreme Court in *State ex. rel. Polk v. Hancock*,
7 237 Ariz. 125 ¶ 8 (2015), which cites as authority *Reed-Kaliher v. Hoggatt*, decided the
8 same day by the same court (and thus before any motion for reconsideration would be
9 due); and the Court of Appeals in *The Residential Utility Consumer Office v. The Arizona*
10 *Corporation Commission*, *supra*, at ¶ 17 (decided August 18, 2015), cites *Sierra Club v.*
11 *ACC*, 237 Ariz. 568 which the same court had decided less than 30 days earlier on July
12 23, 2015 (and Sierra Club subsequently filed a Petition for Review in the Supreme Court
13 6 days later, on August 24, 2015, which Petition for Review is still pending).

14
15 The point is that the Court has issued an Opinion and at this point it is appropriate
16 to cite it as legal precedent. Based on the Court’s Opinion, the Commission should stay
17 the SIB pending a contrary decision of the Supreme Court.

18
19 Next, Willow Valley complains that it has immediate infrastructure needs. This
20 argument is irrelevant – it has nothing to do with the legality of the SIB and should be
21 rejected, similar to the manner in which it was dispatched by the Court of Appeals.

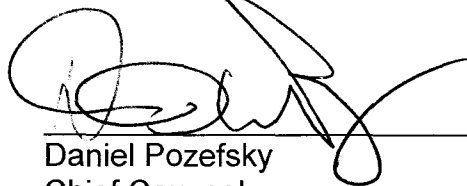
22 Less convincing is Willow Valley’s argument that RUCO did not appeal Willow
23 Valley’s SIB. True, but equally as irrelevant. It has nothing to do with the legality of the
24 SIB and the fact that the Court of Appeals has determined the SIB is illegal. Willow’s SIB
25 is set up and works the same as the SIB in the Eastern Division case. Willow argues that
26
27

1 because RUCO did not appeal its case, the Commission should overlook the legality of
2 the SIB in Willow's situation because RUCO's failure to appeal "must have a
3 consequence." It is illogical to punish or award RUCO because it did not appeal – there
4 is no nexus between RUCO's actions and the issue - the Court of Appeals has
5 determined that the SIB is illegal.

6 Finally, the fact that the Commission's Decision is "final" does not mean that the
7 Commission cannot review it and/or modify it. The Company should know that the
8 Commission frequently modifies/changes/amends its decisions.
9

10 For the foregoing reasons, the Commission should stay the SIB.

11
12 RESPECTFULLY SUBMITTED this 5th day of October, 2015.

13
14 
15 Daniel Pozefsky
16 Chief Counsel
17
18

19 AN ORIGINAL AND THIRTEEN
20 COPIES of the foregoing filed this
21 5th day of October, 2015 with:

22 Docket Control
23 Arizona Corporation Commission
24 1200 W. Washington
25 Phoenix, AZ 85007
26
27

COPIES of the foregoing hand delivered/
mailed this 5th day of October, 2015 to:

Maureen Scott
Wesley Van Cleve
Legal Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Thomas Broderick
Utilities Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Dwight Nodes
Hearing Division
Arizona Corporation Commission
1200 W. Washington
Phoenix, AZ 85007

Timothy Sabo
Michael Patten
Snell & Wilmer, L.L.P.
400 East Van Buren Street
Phoenix, Arizona 85004

Garry D. Hays
The Law Offices of Garry D. Hays, PC
1702 E. Highland Avenue, Suite 204
Phoenix, AZ 85016

Jeffrey W. Crockett
Crockett Law Group, PLLC
1702 E. Highland Avenue, Suite 204
Phoenix, AZ 85016
Attorneys for New World Properties, Inc.

Lawrence V. Robertson, Jr.
Attorney at Law
P.O. Box 1448
Tubac, AZ 85646

1 Michele Van Quathem
2 Ryley Carlock & Applewhite
3 One N. Central Ave., Suite 1200
Phoenix, AZ 85004-4417

4 Steven P. Tardiff
5 44840 W. Paitilla Lane
Maricopa, AZ 85139

6 Willow Valley Club Association
7 c/o Gary McDonald, Chairman
1240 Avalon Ave.
8 Havasu City, AZ 86404

9 Dana L. Jennings
10 42842 W. Morning Dove Lane
Maricopa, AZ 85138

11 Andy and Marilyn Mausser
12 20828 N. Madison Dr.
13 Maricopa, AZ 85138

14 William Sullivan
15 501 E. Thomas Road
Phoenix, Arizona 85012-3205

16 Robert Metli
17 Munger Chadwick, PLC
2398 E. Camelback Road, Suite 240
18 Phoenix, Arizona 85016

19 Berry Becker
20 SNR Management , LLC
50 S. Jones Blvd, Suite 101
21 Las Vegas, Nevada 89107

22
23
24 By Cheryl Fraulob
Cheryl Fraulob